

THE ROLE OF THE VILLAGE HEAD AS A MEDIATOR IN RESOLVING LAND DISPUTES

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Abstract : Indonesia is a country that adheres to a unitary form of government, but it is different if we look at the regional government system where Indonesia has adopted the principle of federalism as regional autonomy. Kendal Regency, geographically, some of its areas are mountainous areas, especially in the village of Sidokumpul, there are still requirements for customs in resolving land disputes. From this, Sidokumpul Village also implemented the ADR (Alternative Dispute Resolution) system. Disputes that occurred in village communities, especially Sidokumpul Village, in their settlement, the community preferred to use conflict resolution in a non-litigation way through the village head. This study uses normative juridical research, or also known as normative legal research. The normative juridical research method is library law research which is carried by researching and studying literature materials or mere secondary data. The land dispute problems that occurred in Sidokumpul village during Ari Rimbawanto's 4 (four) years as Village Head could be resolved properly without having to go to court, this is due to the crucial role of the village head in the settlement.

Keywords: the village head, mediator, land disputes

I. INTRODUCTION

Indonesia is a country who adheres form of state government unit, however different if we look at the system local government where is Indonesia have adopted the principal federalism as regional autonomy. ¹Regional autonomy itself is a regional government organization that has two main elements, namely regulation (rules making, regulation) and administration (rules application, bestuur). At the macro (state) level, these two powers are often referred to as policy-executive bodies.

From an Anthropological point of view, dispute is a social phenomenon that be separated from life. Theoretically, b disputes or disputes in procedural law in Indonesia can be procedures. Meanwhile according to Yahya Harahap has a conclusion: "*However, the bitter experience that befell the community, demonstrates the system judiciary which is not effective (ineffective) and not efficient (inefficient). Settlement of cases takes tens of. A long-winded process, wrapped around a circle attempt law the no ends. Starting appeal, cassation, and review return.*"²

According to Law Number 30 of concerning Arbitration and Alternative Dispute Resolution, Article 1 point (10), alternative dispute resolution is a mechanism for resolving disputes or difference's opinion through procedures agreed upon by the parties, through Negotiation, Mediation, Arbitration or Expert Opinion. Alternative Dispute Resolution b (ADR) is also called Alternative Dispute Resolution (ADR) by para legal practitioners and academics were developed as a way of dispute resolution more own access on justice. Dispute resolution mechanisms are thus categorized into non-litigation media, which is concept of conflict resolution or cooperative, which aims to reach an agreement conflict resolution or dispute which is win-win solution.³

In Kendal Regency, geographically, some of the areas are mountainous areas, especially in Sidokumpul Village. There is still a requirement for customs in resolving land disputes. One of the implementation of settlements in Sidokumpul Village was carried out according to custom which was also one of the solutions in the ADR (Alternative Dispute Resolution) system, which is often used to resolve disputes over land disputes in Sidokumpul Village. Based on the survey conducted by the author, it was found that there were reports from residents to the village head regarding control of paddy fields by the adopted children of heirs who had died. Based on what the authors found, there was a resident with the initials TR that the paddy field was land that had not been divided by inheritance rights and the adopted child was not aware of the previous distribution of inheritance rights. From the report, the village head acts as a mediator and facilitator to resolve land disputes.

II. RESEARCH METHOD

The author uses the normative legal research method, also known as the normative juridical research method at the time of writing. Library law research is carried out using normative juridical research methods, namely research and analysis of library materials or only secondary data.

This research includes normative legal research which originates from secondary data. While the types of data used in this study are as follows:

¹ Judge M. Lukman. 2013. *Autonomy Area In Framework Country Unity Republic Indonesia (Comparative Study Regional autonomy Before and after Change Constitution 1945)* p.1

² M. Yahya Harahap. 2007. *Law Civil Procedure cet.5*, Jakarta: Ray Graphics. Pages 229-230.

³ Rachmadi Usman, "*Option Dispute Resolution Out of Court*" PT. Citra Aditya Bakti, Bandung, 2003, page 4

a. Primary data

The research respondents were residents of the dispute who were also the Head of Sidokumpul Village in Patean District, Kendal Regency. Through interviews with informants, data or information that can be explained is collected for research.

b. Secondary Data

Optional information in this research as an aid, can also be elaborated to help legitimacy and strong quality of essential information. In this study, data from both the literature and the field were collected using two different methods. The authors of this study used interviews and documentation data collection methods.

The process of data analysis is to look at all available data from various sources, such as personal documents, interviews, and observations. ⁴This data analysis is arranged systematically, described, and conclusions are drawn so that it can be communicated to others. This data analysis model is divided into three stages, Data Reduction, Data Presentation and Conclusion Drawing.⁵

III. RESEARCH RESULT

Position of Village Head as Mediator for Land Dispute Settlement

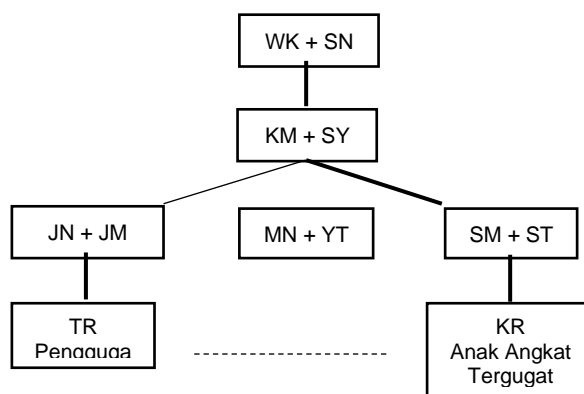


Figure 1. Primary data sources from interviews with plaintiff TR

The above scheme is family tree data from the results of an interview on 7 July 2022 with the plaintiff TR who explained that WK is the great-grandfather of the plaintiff TR who is on behalf of the land title certificate.⁶

This problem first appeared when heirs who did not have biological children adopted or took care of children who were adopted by other people. In short, the adopted child works the rice field belonging to the heir when he is an adult. When the heir dies, the child will indirectly receive the heir's inheritance; however, the biological family of the heir does not accept that the adopted child of the heir controls the rice fields which should be worked on alternately by the biological family.

Because the child is not the heir's biological child and has been given a house and land, he should not be able to control the fields which must be planted alternately with siblings who have inheritance rights.

Alternative settlement of land disputes through the village head, considering the problems that exist in Sidokumpul Village. Non-litigation or out-of-court dispute resolution is the term used to describe the dispute resolution process. The following is the procedure for

⁴ Lexy J. Moleong, *Qualitative Research Methods*, Bandung, PT. Rosdakarya Youth, 2011, p. 247

⁵ Sugiyono, *Mixed Methods*, Bandung; Alfabeta, 2007, p. 334

⁶ Sources from interviews with plaintiff T on July 7, 2022

submitting land dispute resolution from disputes to the village head caused by the problems mentioned above:

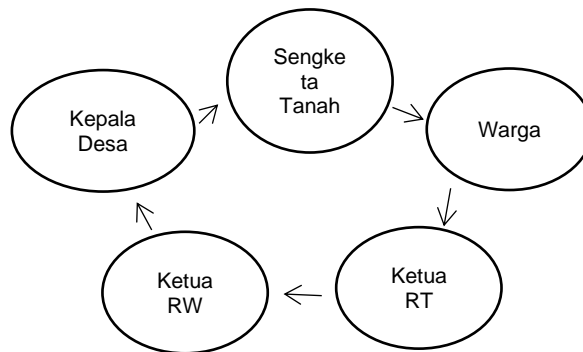


Figure 2. Schemes of the submission process

The description of the scheme above is the submission process in Sidokumpul Village starting with the existence of residents who are in dispute regarding land inheritance, the first process, the plaintiff TR reports to the head of the RT (Rukun Tetangga) with a document of ownership certificate in the name of WK with a land area of 450 m², issued on 5 November 1969,

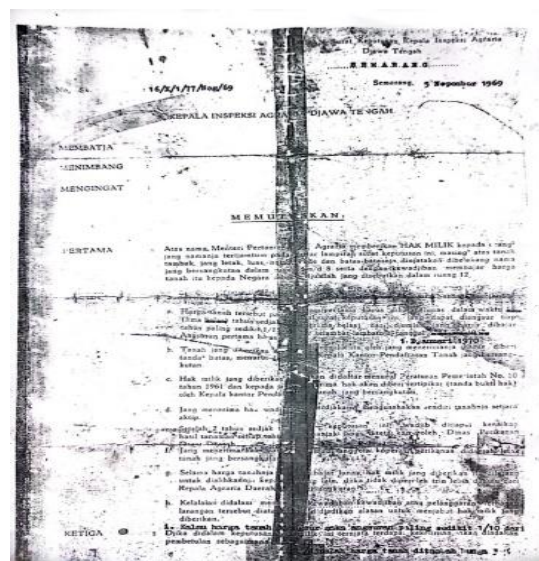


Figure 3. WK Land Title Letter Primary data source from plaintiff TR

After receiving the report, with indications of a personal dispute, the head of the RT will approach both parties to the dispute, both the plaintiff TR and the defendant KR, to reduce the dispute so that it does not drag on as a preventive action. However, if this action cannot be resolved, then it will be reported to the head of the RW (Rukun Warga), secondly, at this stage the head of the RW makes mediation efforts similar to the head of the RT, but if the efforts of the head of the RW still do not produce results then the case is recommended to the village head.

Third, after the report has been submitted to the village head, the two parties to the dispute will be brought together, and will be asked for information on the issues in dispute, as well as for the head of the RT and the head of the RW will be summoned as the competent authority and as a witness to be asked for information regarding the background to the dispute.

With the gathering of the parties, it will be followed by mediation with the village head as a mediator in order to resolve disputes involving the village secretary and also the hamlet head.

In mediating the settlement of land disputes over the inheritance of adopted children that occurred in Sidokumpul Village, the village head served as a mediator, facilitating the location and data needed to clarify the position of land rights in dispute. The village head, based on Village Book C, explained to the parties that the transfer of land rights to KR's adopted children occurred because it had been granted by the heir's parents who had not had time to inform their children about the land transfer until their parents died.⁷ *"Book C of the Village is a record of evidence of the transfer of land ownership rights that have been carried out by residents of Sidokumpul Village, be it buying and selling, inheritance or grants."*

By not being informed about the grant from parents to their grandchildren, the plaintiff caused a misunderstanding of the knowledge of inheritance rights so that an initiative emerged to sue the adopted child. From what has been explained by the head of the village, the plaintiff can *"legowo"* (Javanese language) or accept gracefully that it is clear that the right to the land has been granted by the previous parent to his adopted child by recording the right to transfer the land to the grant in Book C Village.⁸

The description above can provide a bit of how the process of submitting and resolving land disputes in Sidokumpul Village starts from the residents in the dispute to the village head, with these stages not only does every citizen face a problem directly to the village head.

The results of interviews with 25 respondents related to the role of the Village Head as a mediator in resolving land disputes in Sidokumpul Village, the Village Head was responsive to reports from residents regarding disputes and facilitated a place for mediation, in carrying out mediation the Village Head was accompanied by Village Secretariat and Kadus not sided with one of the parties to win the dispute, and the Village Head based on Village Book C provided correct data regarding the transfer of land rights in Sidokumpul Village.

Another case of a land dispute that occurred in Sidokumpul Village was three brothers who A, B, and C had received equal shares of inheritance, while A got the inherited land right on the banks of the river. the area of land B and C, from this the heirs B and C asked to be redistributed because they felt that the distribution was unfair. This problem was resolved during the tenure of the Village Head led by Ari Rimbawanto. Here are some examples of cases that have been resolved in Sidokumpul Village:

Table 4. Settlement of land dispute cases in Sidokumpul Village

No.	Year	Amount	Completion	
			Village head	Court
1.	2018–2022	7	Resolved	-

Source of data from interviews with the Village Head of Sidokumpul Village

Based on the table above, it can be concluded that the land dispute problems that occurred in Sidokumpul village during Ari Rimbawanto's 4 (four) years as Village Head could be resolved properly without having to go to court, this was due to the crucial role of the village head in the settlement. The role of the village head here has great influence on its citizens in terms of being a mediator for dispute resolution.

With regard to inheritance issues, an understanding of inheritance law is very much needed, there are various terms that are exclusively available categorization according to Western, Islamic and Civil Law aspects of custom or custom. The best settlement strategy is a strategy that is unique to Indonesia, by holding deliberations to reach consensus with the heirs.

⁷ Results of an interview with the Head of Sidokumpul Village on December 19, 2022

⁸ Ibid.

However, if the holding of deliberation for consensus cannot produce the expected results, the heirs can file a lawsuit in court.

A legal result of the village head as a mediator

In the process of filing an administrative claim for an inheritance land dispute in Sidokumpul Village, the defendant TR only showed land ownership documents to RT, RW and the Village Head. The mediation process was carried out by the village head by facilitating the location and also data from the Village Book C which showed that the rights to the land had been transferred to the defendant KR by means of a grant from the parents of the heirs.

From these data the Village Head can provide an explanation to the plaintiff regarding the change in land ownership rights by grant, with an explanation from the village head resulting in knowledge of the plaintiff TR's ignorance of the transfer of land that has been granted to the defendant KR. The Village Head has been able to resolve disputes in accordance with Law Number 6 of 2014.

In this case the Sidokumpul Village Head becomes the mediator, being neutral and impartial to anyone to assist the parties in the mediation process to look for various possibilities that can resolve disputes without having to decide or force a settlement.

In the mediation process carried out by the village head of Sidokumpul, I don't think it resulted in any legal consequences, because the time for mediation is determined by a schedule for when the parties can meet, it cannot be scheduled like mediation in court. The potential for the absence of parties who do not have good intentions is very small or even non-existent. However, there are still deficiencies made by the Village Head by not asking for complete documents from the Plaintiff TR which are formal requirements related to the formalities of preparing a lawsuit such as the identity of the plaintiff, clarity of the object of the lawsuit and other matters related to the formal requirements for filing a lawsuit. And supposedly with the incomplete documents or formal requirements for the submission, the Head of Sidokumpul Village should be able to refuse the lawsuit in accordance with the sound of article 8 Number 3 Rv (Reglement of de Rechtsvordering) "If a lawsuit contains birth and mental defects, then the lawsuit is rejected or cannot be accepted". M. Yahya Harahap said, if the plaintiff does not prove his argument, then the lawsuit will be rejected in its entirety. This is because the plaintiff is deemed to have failed to prove his argument.⁹ Meanwhile, the Village Head accepted the lawsuit even though it could be suspected that it was included in the smuggling of law and the lawsuit should have been rejected. However, in this case the legal consequences of the village head acting as a mediator and collecting evidence, the legal consequences can be resolved peacefully.

Data analysis

According to article 14 paragraph 2 of Government Regulation Number 72 of 2005, the Village Head is the main person in charge of government, development and society in the context of administering regional government affairs. This is because the Village Head plays an important role as an executor in the organization.

Sidokumpul Village as a mediator in resolving land disputes according to custom is in accordance with Law number 6 of 2014 concerning villages, in article 26 paragraph (4) letter k, which states that the village head has an obligation to resolve community disputes in the village. Meanwhile, the Traditional Village Authority regulates in Article 103: Article 19 d concerning origin rights as the basis for customary village authority which reads "Settlement of customary disputes law that applies in customary villages areas are in harmony the principles of human rights humans by prioritizing settlement by deliberation".

⁹ M. Yahya Harahap. 2016, *Civil Procedure Law Concerning Lawsuits, Trials, Confiscations, Evidence, and Court Decisions*. Jakarta: Sinar Graphics

According to the article, the Sidokumpul Village Head has become a mediator in order to fulfill his responsibility to resolve disputes that arise within the village. However, the types of cases and disputes, forms of mechanisms, results of decisions, or legal implications of village head dispute resolution are not explained in Law Number 6 of 2014 or Government Regulation (PP) Number 43 of 2014.

The Sidokumpul Village Head carries out dispute resolution outside the court in accordance with the law article 1 point 10 of Law Number 30 of 1999, alternative dispute resolution is a dispute resolution institution or dissent through procedures agreed upon by the parties, namely settlement outside the court through consultation, negotiation, mediation, conciliation, or expert judgment.

Transfer of rights to land that occurred in Sidokumpul Village was the transfer of rights to land by way of grants to adopted children, this has been recorded in Book C of the Village, whereas in 37 b Regulation (PP) Number 24 Year 1997, although a deed drawn up by the authorized PPAT must be used to show the transfer, the transfer of land rights due to a grant does not necessarily mean that the land is handed over by the giver to the recipient. Meanwhile, according to Article 1666 of the Civil Code, a grant is an agreement in which the grantor, at the time of his death, freely and irrevocably gives something to the beneficiary who receives the grant.

In a village, of course, there must be a problem. It can be seen that every community group has a problem with the difference between actual and ideal, between what is practical and standard, and between what is exist in reality and what it wants. Society has various group standards and values in determining individual behavior. Deviation from the values that exist in society creates behavioral gaps and disturbs order in society.¹⁰

It is stated in Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states : "All citizens have the same position before law and government and are obliged to uphold this law and government without exception". With this matter, every Indonesian citizen must be treated properly and fairly in his position before the law.

Thus, the village head is expected to be able to foster peace in his area in the absence of any disturbance to public order. By applying the applicable law as a means of controlling public order in his village. In essence the village head can implement legal policies to resolve a dispute outside the court conducted by the village head himself.

Even though PERMA Number 01 of 2008 in Article 6 paragraph (1) states that a District Court Judge can become a mediator while other parties namely, people who are determined by the parties to act as mediators must have a certificate as a mediator, but this does not apply for the mediation process that occurs outside the court as has been done by the village head of Sidokumpul.

The village head of sidokumpul carries out his duties as a mediator for land dispute resolution which is his authority based on Law Number 6 of 2014 Article 26 paragraph (4) letter k, which is the obligation of a village head to resolve disputes among residents in his area, and with the consequences do not have to have certification as a mediator to carry out their duties in resolving disputes.

However, if the village head does not carry out his obligations as a mediator or resolve disputes that occur, the village head will be subject to sanctions in accordance with Law Number 6 of 2014 in Article 28 paragraph:

¹⁰ Journal of Samuel Dharma Putra Nainggolan, Faculty of Law, Airlangga University, Surabaya, 2018
"Position of Village Head as Peace Judge"

1. Village heads who do not carry out the obligations referred to in Article 26 paragraph (4) and Article 27 are subject to administrative sanctions in the form of verbal warnings and/or written warnings.
2. In the event that the administrative sanction as referred to in paragraph (1) is not carried out, a temporary dismissal is carried out and can be continued with dismissal.

IV. CONCLUSION

The position of the Village Head as a mediator in resolving land disputes due to inheritance is resolved peacefully in accordance with the duties and authorities of Article 26 paragraph (4) letter k of Law Number 6 of 2014, the village head has the obligation to resolve community disputes in the village. And in accordance with the provisions of the authority of the Traditional Village in article 103 The authority of the traditional village is based on the rights of origin as referred to in Article 19 letter d which states " Settlement of customary disputes based on customary law that applies in Traditional Villages in areas that are in harmony with the principles of human rights by prioritizing settlement in a deliberation

Deficiencies made by the Village Head by not asking for complete documents from the Plaintiff TR which are formal requirements related to the formalities of drafting a lawsuit such as the identity of the plaintiff, clarity of the object of the lawsuit and other matters in accordance with the provisions of article 8 Point 3 Rv (Reglement of de Rechtsvordering) "If a lawsuit contains physical and mental defects, then the claim is rejected or cannot be accepted".

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